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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Nov 27, 2023

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

BEATRIZ J.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

NO: 1:22-CV-3137-RMP

ORDER DENYING PLAINTIFF'S
BRIEF AND GRANTING
DEFENDANT'S BRIEF

BEFORE THE COURT, without oral argument, are briefs from Plaintiff Beatriz J.¹, ECF No. 10, and Defendant the Commissioner of Social Security (the "Commissioner"), ECF No. 12. Plaintiff seeks judicial review, pursuant to 42 U.S.C. §§ 405(g) and 1383(c)(3), of the Commissioner's denial of her claim for Disability Insurance Benefits ("DIB") under Title II of the Social Security Act (the "Act"). *See* ECF No. 10 at 2.

¹ In the interest of protecting Plaintiff's privacy, the Court uses Plaintiff's first name and last initial.

1 Having considered the parties' briefs, ECF Nos. 10 and 12; Plaintiff's reply,
2 ECF No. 14; the administrative record, and the applicable law, the Court is fully
3 informed. For the reasons set forth below, the Court denies judgment for Plaintiff
4 and directs entry of judgment in favor of the Commissioner.

5 **BACKGROUND**

6 ***General Context***

7 Plaintiff protectively filed for DIB on approximately May 28, 2015, alleging
8 an onset date of October 28, 2013. *See* Administrative Record ("AR")² 129–30.
9 Plaintiff was 36 years old on the alleged disability onset date and asserted that she
10 was unable to work due to neck and back injuries, depression, bilateral hand
11 tingling, left leg pain, and left arm pain. AR 129. Plaintiff alleged that she stopped
12 working prior to March 30, 2018, because of her conditions. AR 87. Plaintiff's
13 application was denied initially, upon reconsideration, and following an unfavorable
14 decision by an Administrative Law Judge ("ALJ") in August 2018. *See* AR 162–73.
15 Plaintiff sought review by the Appeals Council, which remanded Plaintiff's
16 application for rehearing on November 29, 2019. AR 181.

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² The AR is filed at ECF No. 8.

1 On March 9, 2021, Plaintiff appeared by telephone, represented by her
2 attorney Kathryn Higgs and attended by a Spanish interpreter, Vismar³, at a hearing
3 held by Administrative Law Judge (“ALJ”) M.J. Adams from Seattle, Washington.
4 AR 80–102. The ALJ heard from Plaintiff. AR 91–102. ALJ Adams held a
5 supplemental hearing on October 28, 2021, at which Plaintiff was represented by
6 Ms. Higgs and assisted by interpreter Kathryn Montano. AR 104–06. ALJ Adams
7 heard from Plaintiff and from Vocational Expert (“VE”) Fred Cutler. AR 105–26.
8 ALJ Adams issued an unfavorable decision on November 10, 2021, and the Appeals
9 Council denied review. AR 1–8, 21–38.

10 ***ALJ’s Decision***

11 Applying the five-step evaluation process, ALJ Adams found:

12 **Step one:** Plaintiff last met the insured status requirements of the SSA on
13 March 31, 2020. AR 24. Plaintiff did not engage in twelve consecutive months of
14 substantial gainful activity from her alleged onset date of October 28, 2013, through
15 her date last insured of March 31, 2020. AR 24 (citing 20 C.F.R. § 404.1571 *et seq.*).

16 **Step two:** Through the date last insured, Plaintiff had the following severe
17 impairments: lumbar and cervical spine conditions; costochondritis; obesity;
18 depression; anxiety disorder; and somatoform disorder, pursuant to 20 C.F.R. §§

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³ The interpreter appears to have a mononym, as only one name appears for that
individual in the transcript. AR 80.

1 404.1520(c). AR 24. The ALJ memorialized that, “regardless of the precise mental
2 and physical diagnoses [he found] severe, [he] considered all [of] the claimant’s
3 symptoms as reflected in the longitudinal record in evaluating his testimony and in
4 assessing the residual functional capacity below.” AR 24.

5 **Step three:** The ALJ concluded that, through the date last insured, Plaintiff
6 did not have an impairment or combination of impairments that met or medically
7 equaled the severity of one of the listed impairments in 20 C.F.R. Part 404, Subpart
8 P, Appendix 1. AR 24 (citing 20 C.F.R. §§ 404.1520(d), 404.1525, and 404.1526).
9 The ALJ memorialized that Plaintiff’s spine symptoms do not meet listing 1.15
10 (disorders of the skeletal spine). AR 24–25. The ALJ further considered whether
11 the functional limitations caused by obesity medically equal a listing, considered
12 alone or in combination with other impairments. AR 25. Regarding Plaintiff’s
13 mental impairments, the ALJ considered listings 12.04 for depressive, bipolar, and
14 related disorders, 12.06 for anxiety and obsessive-compulsive disorders, and 12.07
15 for somatic symptom and related disorders. AR 25. The ALJ considered whether
16 Plaintiff’s impairments satisfy the “paragraph B” criteria, requiring at least one
17 extreme or two marked limitations in four broad areas of functioning. AR 25–26.
18 The ALJ found Plaintiff only moderately limited in understanding, remembering, or
19 applying information and in concentrating, persisting, or maintaining pace and only
20 mildly limited in interacting with others and in adapting or managing oneself. AR
21

1 26. Therefore, the ALJ found that the “paragraph B” criteria were not satisfied and
2 further found that the “paragraph C” criteria are “not present in this case.” AR 26.

3 **Residual Functional Capacity (“RFC”):** The ALJ found that Plaintiff,
4 through the date last insured, had the RFC to perform light work as defined in 20
5 C.F.R. § 404.1567(b), with the following exceptions:

6 She could lift and/or carry 10 pounds frequently and 20 pounds
7 occasionally. She could stand and/or walk for a total of 6 hours and
8 could sit for a total of 6 hours. Pushing and pulling was unlimited
9 except for the above limitations regarding lifting and carrying. She
10 could occasionally climb ladders, ropes, or scaffolds, and could
11 frequently climb ramps and stairs. She could frequently stoop, kneel,
12 and crouch. She could occasionally crawl. She could occasionally reach
13 overhead bilaterally. She could understand, remember, and carry out
14 only simple instructions. She could exercise simple workplace
15 judgment. She could perform work that is learned by on-the-job training
16 beyond a short demonstration lasting up to and including one month.
17 She could respond appropriately to supervisors and co-workers. She
18 could deal with occasional changes in the work environment. She could
19 have only occasional interaction with the public.

20 AR 27.

21 In determining Plaintiff’s RFC, the ALJ found that Plaintiff’s “medically
22 determinable impairments could reasonably be expected to cause the alleged
23 symptoms, “[h]owever, the claimant’s statements concerning the intensity,
24 persistence and limiting effects of these symptoms are not entirely consistent with
25 the medical evidence and other evidence in the record for the reasons explained in
26 this decision.” AR 28.

1 **Step four:** The ALJ found that, through the date last insured, Plaintiff was
2 unable to perform any past relevant work. AR 36 (citing 20 C.F.R. § 404.1565).

3 **Step five:** The ALJ found that Plaintiff has a marginal education; was 40
4 years old, which is defined as a younger individual, age 18-49, on the date last
5 insured; and that transferability of job skills is not material to the determination of
6 disability because Plaintiff's past relevant work is unskilled. AR 36 (citing 20
7 C.F.R. §§ 404.1569 and 404.1569a). The ALJ found that given Plaintiff's age,
8 education, work experience, and RFC, Plaintiff could have made a successful
9 adjustment to other work that exists in significant numbers in the national economy.
10 AR 36. Specifically, the ALJ recounted that the VE identified the following
11 representative occupations that Plaintiff could have performed with the RFC through
12 the date last insured: housekeeper/cleaner (light, unskilled, with around 193,000 jobs
13 nationally); small products assembler I (light, unskilled, with around 315,000 jobs
14 nationally); and car wash attendant, automatic (light, unskilled work, with around
15 37,000 jobs nationally). AR 37. The ALJ concluded that Plaintiff was not under a
16 disability within the meaning of the Act from the alleged onset date of October 28,
17 2013, through the date last insured. AR 37.

18 Plaintiff sought review of the ALJ's decision in this Court. ECF No. 1.

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21 ORDER DENYING PLAINTIFF'S BRIEF AND GRANTING DEFENDANT'S
BRIEF ~ 6

LEGAL STANDARD

Standard of Review

3 Congress has provided a limited scope of judicial review of the
4 Commissioner's decision. 42 U.S.C. § 405(g). A court may set aside the
5 Commissioner's denial of benefits only if the ALJ's determination was based on
6 legal error or not supported by substantial evidence. *See Jones v. Heckler*, 760 F.2d
7 993, 995 (9th Cir. 1985) (citing 42 U.S.C. § 405(g)). "The [Commissioner's]
8 determination that a claimant is not disabled will be upheld if the findings of fact are
9 supported by substantial evidence." *Delgado v. Heckler*, 722 F.2d 570, 572 (9th Cir.
10 1983) (citing 42 U.S.C. § 405(g)). Substantial evidence is more than a mere
11 scintilla, but less than a preponderance. *Sorenson v. Weinberger*, 514 F.2d 1112,
12 1119 n.10 (9th Cir. 1975); *McCallister v. Sullivan*, 888 F.2d 599, 601–02 (9th Cir.
13 1989). Substantial evidence "means such evidence as a reasonable mind might
14 accept as adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389,
15 401 (1971) (citations omitted). "[S]uch inferences and conclusions as the
16 [Commissioner] may reasonably draw from the evidence" also will be upheld. *Mark*
17 *v. Celebreeze*, 348 F.2d 289, 293 (9th Cir. 1965). On review, the court considers the
18 record, not just the evidence supporting the decisions of the Commissioner.
19 *Weetman v. Sullivan*, 877 F.2d 20, 22 (9th Cir. 1989).

ORDER DENYING PLAINTIFF'S BRIEF AND GRANTING DEFENDANT'S
BRIEF ~ 7

1 A decision supported by substantial evidence still will be set aside if the
2 proper legal standards were not applied in weighing the evidence and making a
3 decision. *Brawner v. Sec'y of Health and Human Servs.*, 839 F.2d 432, 433 (9th Cir.
4 1988). Thus, if there is substantial evidence to support the administrative findings,
5 or if there is conflicting evidence that will support a finding of either disability or
6 nondisability, the finding of the Commissioner is conclusive. *Sprague v. Bowen*,
7 812 F.2d 1226, 1229–30 (9th Cir. 1987).

8 ***Definition of Disability***

9 The Social Security Act defines “disability” as the “inability to engage in any
10 substantial gainful activity by reason of any medically determinable physical or
11 mental impairment which can be expected to result in death, or which has lasted or
12 can be expected to last for a continuous period of not less than 12 months.” 42
13 U.S.C. § 423(d)(1)(A). The Act also provides that a claimant shall be determined to
14 be under a disability only if the impairments are of such severity that the claimant is
15 not only unable to do their previous work, but cannot, considering the claimant’s
16 age, education, and work experiences, engage in any other substantial gainful work
17 which exists in the national economy. 42 U.S.C. § 423(d)(2)(A). Thus, the
18 definition of disability consists of both medical and vocational components. *Edlund*
19 *v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001).

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21 ORDER DENYING PLAINTIFF’S BRIEF AND GRANTING DEFENDANT’S
BRIEF ~ 8

1 ***Sequential Evaluation Process***

2 The Commissioner has established a five-step sequential evaluation process
3 for determining whether a claimant is disabled. 20 C.F.R. § 404.1520. Step one
4 determines if they are engaged in substantial gainful activities. If the claimant is
5 engaged in substantial gainful activities, benefits are denied. 20 C.F.R. §
6 404.1520(a)(4)(i).

7 If the claimant is not engaged in substantial gainful activities, the decision
8 maker proceeds to step two and determines whether the claimant has a medically
9 severe impairment or combination of impairments. 20 C.F.R. § 404.1520(a)(4)(ii).
10 If the claimant does not have a severe impairment or combination of impairments,
11 the disability claim is denied.

12 If the impairment is severe, the evaluation proceeds to the third step, which
13 compares the claimant's impairment with listed impairments acknowledged by the
14 Commissioner to be so severe as to preclude any gainful activity. 20 C.F.R. §
15 404.1520(a)(4)(iii); *see also* 20 C.F.R. § 404, Subpt. P, App. 1. If the impairment
16 meets or equals one of the listed impairments, the claimant is conclusively presumed
17 to be disabled.

18 If the impairment is not one conclusively presumed to be disabling, the
19 evaluation proceeds to the fourth step, which determines whether the impairment
20 prevents the claimant from performing work that they have performed in the past. If
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1 the claimant can perform their previous work, the claimant is not disabled. 20
2 C.F.R. § 404.1520(a)(4)(iv). At this step, the claimant's RFC assessment is
3 considered.

4 If the claimant cannot perform this work, the fifth and final step in the process
5 determines whether the claimant is able to perform other work in the national
6 economy considering their residual functional capacity and age, education, and past
7 work experience. 20 C.F.R. § 404.1520(a)(4)(v); *Bowen v. Yuckert*, 482 U.S. 137,
8 142 (1987).

9 The initial burden of proof rests upon the claimant to establish a *prima facie*
10 case of entitlement to disability benefits. *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th
11 Cir. 1971); *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999). The initial burden
12 is met once the claimant establishes that a physical or mental impairment prevents
13 them from engaging in their previous occupation. *Meanel*, 172 F.3d at 1113. The
14 burden then shifts, at step five, to the Commissioner to show that (1) the claimant
15 can perform other substantial gainful activity, and (2) a “significant number of jobs
16 exist in the national economy” which the claimant can perform. *Kail v. Heckler*, 722
17 F.2d 1496, 1498 (9th Cir. 1984).

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21 ORDER DENYING PLAINTIFF'S BRIEF AND GRANTING DEFENDANT'S
BRIEF ~ 10

1 ISSUES ON APPEAL

2 Plaintiff's brief raises the following issues regarding the ALJ's decision:

- 3 1. Did the ALJ erroneously discount Plaintiff's subjective symptom
4 statements?
- 5 2. Did the ALJ err in his evaluation of Plaintiff's medical source opinions?
- 6 3. Did the ALJ err in formulating Plaintiff's RFC, resulting in harmful
error at step five?

7 ***Subjective Symptom Testimony***

8 Plaintiff argues that the ALJ did not provide clear and convincing reasons for
9 discounting her subjective symptom testimony, as the ALJ did not consider the
10 objective medical evidence in the context of the nature of Plaintiff's conditions,
11 which include multi-level cervical degeneration and somatoform disorder, which
12 entails Plaintiff focusing on her physical symptoms, resulting in severe distress and
13 an increased lack of functioning. ECF No. 14 at 2–3 (citing American Psychiatric
14 Association DSM-5 definition of somatic symptom disorder); *see also* ECF No. 10
15 at 6–12. Plaintiff submits that while Plaintiff's "treating and examining providers
16 described pain behavior in excess of what one would expect given the objective
17 medical evidence, none of the providers indicated she was malingering." ECF No.
18 14. at 3. Plaintiff adds that her limitation of her daily and social activities further
19 supports her subjective symptom statements. *Id.* at 4. Plaintiff summarizes that
20 "[h]ad the ALJ correctly found claimant's testimony to be consistent with the record,
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1 it would have reflected in a sedentary, unskilled RFC, with off task behavior, and
2 unscheduled absences, and claimant would have been found disabled.” *Id.*

3 The Commissioner responds that the ALJ relied on substantial evidence in
4 finding that the objective medical record is inconsistent with Plaintiff’s subjective
5 testimony. ECF No. 12 at 3 (citing AR 28–29, 689, 744, 752, 777, 782, 787, 982,
6 1212–13, 1406, 1490–92, 1573, 1830, 1936, 1938, 2145, 2147, 1612, 1637, 2187–
7 89). The Commissioner further contends that the ALJ cited substantial evidence in
8 finding that Plaintiff’s history of conservative treatment to manage her pain was
9 incompatible with the degree of symptoms that Plaintiff alleged. *Id.* (citing AR 29,
10 1210–12, 2067, 2185). The Commissioner continues that the ALJ also provided a
11 legitimate reason in finding that the evidence indicated “possible symptom
12 exaggeration, which ‘tends to diminish the believability of [Plaintiff’s] subjective
13 report of symptoms.’” *Id.* at 12 (quoting AR 29). The Commissioner discusses
14 record evidence that indicate “inconsistencies that were suggestive of symptom
15 magnification, or, at the very least, undermined the reliability of Plaintiff’s
16 complaints.” *Id.* at 5–7 (citing AR 1490, 1612, and 1637). Next, the Commissioner
17 argues that the ALJ reasonably found that Plaintiff’s treatment record undermined
18 her mental health allegations, as Plaintiff’s mental symptoms improved with
19 medication and treatment. *Id.* at 7–8 (citing AR 30, 772, 1175–77, 1309, 1401,
20 1406, 1813, 1965, 2049–50, 2052, 2062, 2132, 2201, 2229, and 2233). Lastly, the
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1 Commissioner asserts that the ALJ relied on substantial evidence in finding that
2 Plaintiff's activities were at odds with the severity of the symptoms that Plaintiff
3 alleged. *Id.* at 8–9.

4 In deciding whether to accept a claimant's subjective pain or symptom
5 testimony, an ALJ must perform a two-step analysis. *Smolen v. Chater*, 80 F.3d
6 1273, 1281 (9th Cir. 1996). First, the ALJ must evaluate “whether the claimant has
7 presented objective medical evidence of an underlying impairment ‘which could
8 reasonably be expected to produce the pain or other symptoms alleged.’”

9 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007) (quoting *Bunnell v.*
10 *Sullivan*, 947 F.2d 341, 344 (9th Cir. 1991)). Second, if the first test is met and there
11 is no evidence of malingering, “the ALJ can reject the claimant's testimony about
12 the severity of her symptoms only by offering specific, clear and convincing reasons
13 for doing so.” *Smolen*, 80 F.3d at 1281.

14 The ALJ summarized Plaintiff's symptom claims as follows:

15 In a function report, the claimant alleged difficulty lifting more than 10
16 pounds due to back pain and upper extremity weakness. Her neck pain
17 cause headaches and makes it hard to bend her neck. When her pain
18 increases, she has chest pain and difficulty breathing. She cannot walk
19 more than 30 minutes due to leg pain and swelling. She needs assistance
20 from her husband and children to do activities such a [sic] cooking and
household chores. She cannot drive a car due to pain, and because she
had poor concentration and gets lost. She cannot pay bills, count
change, handle a saving account, or use a checkbook due to poor
concentration. She has to alternate between sitting and standing. She
has problems with memory and concentration.

1 The claimant testified to an inability to work due to depression and pain,
2 primarily in her back and neck. She has body aches, and her neck pain
3 radiates to her arms. She cooks and shops for herself, but it is hard. She
4 stays at home because of her symptoms. The claimant testified that she
could not return to work due to constant pain, anxiety, and panic
attacks. She cannot read or write English, but can read and write in
Spanish.

5 AR 27–28 (citing AR 562–69 and hearing transcripts).

6 First, the ALJ found that the medical evidence reflected some limitations, but
7 was not consistent with the level of functional impairment that Plaintiff alleged. AR
8 28. The ALJ found that clinical findings do not validate the degree of limitation that
9 Plaintiff claims. AR 28. The ALJ cites to medical records, including MRI imaging
10 and physical examinations, showing unremarkable findings to mild abnormalities
11 from June 2018, August 2016, and June 2017. AR 28–29. Second, the ALJ
12 reasoned that Plaintiff has “required only a conservative course of treatment for her
13 reported pain symptoms,” with Plaintiff’s providers recommending only medication,
14 physical therapy, and increased exercise and core strengthening. AR 29 (citing AR
15 1210–16; 2061–68). Third, the ALJ reasoned that the “evidence suggests possible
16 poor effort or symptom exaggeration, which tends to diminish the believability” of
17 Plaintiff’s claims. AR 29–30. Fourth, the ALJ found that “[m]ost treatment records
18 reflect an unremarkable mental status presentation” by Plaintiff and that Plaintiff’s
19 “mental symptoms improved with conservative treatment.” AR 30. Fifth, and
20 finally, the ALJ reasoned that Plaintiff’s activities, including daily activities,
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1 occasional travel, and seasonal work, “are not entirely consistent with her alleged
2 symptom severity and functional limitation.” AR 30–31.

3 While an ALJ cannot rely solely on a lack of support for a claimant’s
4 subjective complaints from objective medical evidence, inconsistency with the
5 objective medical evidence can qualify as one of several clear and convincing
6 reasons to discount a claimant’s statements. *See Johnson v. Shalala*, 60 F.3d 1428,
7 1434 (9th Cir. 1995) (finding that contradiction with medical records is a sufficient
8 basis for rejecting a claimant’s subjective testimony); *see also Klein v. Berryhill*, 717
9 F. App’x 664, 666 (9th Cir. 2017) (finding inconsistency between a claimant’s
10 testimony and objective medical evidence can comprise a clear and convincing
11 reason for rejecting the testimony). With respect to the objective medical record, the
12 ALJ cited substantial evidence supporting that providers and examiners found no
13 clinical explanation for Plaintiff’s complaints, regardless of whether the treatment
14 record also shows that Plaintiff consistently reported pain or other symptoms. The
15 ALJ cited to imaging studies during the relevant period that showed no more than
16 mild findings. AR 28–29, 982, 1936, 1938, 2145, and 2147.

17 Critically, the ALJ provided reasons in addition to an inconsistency with the
18 objective medical record, including conservative treatment, poor effort or symptom
19 exaggeration, unremarkable mental status presentation, and activities not consistent
20 with the degree of impairment alleged. AR 29–31. Those reasons are supported by
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1 substantial evidence. For instance, with respect to conservative treatment, the ALJ
2 cited to records showing that Plaintiff's physical symptoms were treated with
3 medication, physical therapy, and recommendation to exercise more. AR 29, 1210–
4 12, 2061–67, 2107–09. ALJs may rely on evidence of conservative treatment to
5 discount a claimant's subjective complaints. *Smartt v. Kijakazi*, 53 F.4th 489, 500
6 (9th Cir. 2022).

7 In addition, with respect to possible lack of effort or symptom magnification,
8 the ALJ noted that at an examination relating to Plaintiff's worker's compensation
9 claim in August 2016, the examiner asked Plaintiff to dorsiflex her left foot. AR 29
10 (citing AR 1490). The examiner recorded that Plaintiff simply stared at her foot and
11 stated that she could not make it move. *Id.* When the examiner reminded Plaintiff
12 that she had walked on her heels a few moments earlier, Plaintiff "was able with
13 much coaxing to resist maximal examiner effort." AR 1490. In another record, a
14 physician noted that there was an "element of catastrophizing" in Plaintiff's
15 reporting of her chronic neck and back pain and recommended only conservative
16 treatment for her complaints. AR 2062–63. In April 2015, a psychiatrist found that
17 Plaintiff's depression was "in partial remission" with a "fairly low dose" of only one
18 antidepressant. AR 1175. Another provider noted that Plaintiff's restriction to
19 employability was that "[s]he feels disabled." AR 1631.

1 With respect to unremarkable mental status examinations, the ALJ cited
2 evidence that Plaintiff presented as “pleasant cooperative, and appropriate” and “not
3 anxious or tearful”; “calm,” in a “good” mood, and “pleasant”; and “alert and
4 oriented” at appointments throughout the relevant period. AR 32–33 772, 1309,
5 1401, 1406, 1965, 2049, 2052, 2062, 2132, 2201, and 2229.

6 Having found at least four specific, clear, and convincing reasons that the
7 record evidence was inconsistent with the degree of limitation that Plaintiff alleged
8 in her subjective testimony, the Court finds no error on this ground.

9 ***Medical Source Opinions***

10 Plaintiff argues that the ALJ gave inadequate weight to Plaintiff’s treating
11 providers, including treating mental health providers Silverio Arenas, PhD; Dr. C.
12 Donald Williams; and Cari Cowan, ARNP, and her providers at the Rehabilitation
13 Institute of Washington (“RIW”). ECF No. 10 at 12–18.

14 The Commissioner responds that, as the record contains conflicting opinions,
15 the ALJ could discount the contradicted opinions from Dr. Williams, Dr. Arenas,
16 and the Rehabilitation Institute of Washington for specific and legitimate reasons
17 supported by substantial evidence in the record. ECF No. 12 at 10–12. The
18 Commissioner maintains that the ALJ’s reasons for discounting these three opinions
19 satisfied this standard. *Id.* at 12.

1 Plaintiff applied for DIB on approximately May 28, 2015. AR 129–30.

2 Revisions to rules guiding the evaluation of medical evidence that took effect on
3 March 27, 2017, do not apply to claims filed before March 27, 2017, and the
4 “treating physician rule” under the previous regulations instead applies. *See* 20
5 C.F.R. § 404.1527.

6 Under the treating physician rule, “the weight afforded to a medical opinion
7 depends upon the source of that opinion. A treating physician's opinion, for
8 example, is entitled to greater weight than the opinions of nontreating physicians.”
9 *Coleman v. Saul*, 979 F.3d 751, 756 (9th Cir. 2020). An ALJ must consider the
10 acceptable medical source opinions of record and assign weight to each. 20 C.F.R.
11 § 404.1527(c). This responsibility often involves resolving conflicts and
12 ambiguities in the medical evidence. *Reddick v. Chater*, 157 F.3d 715, 722 (9th
13 Cir. 1998). To reject the contradicted opinion of a treating or examining physician,
14 the ALJ must provide specific and legitimate reasons for doing so. *Lester v.*
15 *Chater*, 81 F.3d 821, 830–31 (9th Cir. 1995). “An ALJ can satisfy the substantial
16 evidence requirement by setting out a detailed and thorough summary of the facts
17 and conflicting clinical evidence, stating his interpretation thereof, and making
18 findings.” *Garrison v. Colvin*, 759 F.3d 995, 1012 (9th Cir. 2014) (citing *Reddick*,
19 157 F.3d at 725)).

1 An ALJ may discount an otherwise valid medical source opinion as overly
2 conclusory, poorly supported by or inconsistent with the objective medical record,
3 or inordinately reliant on a claimant's self-reported symptoms, provided the ALJ
4 provides clear and convincing reasons to discredit the symptom allegations. *See*,
5 *e.g.*, *Coleman v. Saul*, 979 F.3d 751, 757–58 (9th Cir. 2020).

6 **Drs. Arenas and Williams**

7 Plaintiff argues that the ALJ erred in his treatment of Dr. Arenas because:
8 (1) the ALJ did not explain what activities were inconsistent with Dr. Arenas's
9 findings or Plaintiff's self-reports; (2) the ALJ erroneously faulted Dr. Arenas for
10 opining that Plaintiff would have difficulty securing work due to lack of English
11 skills; and (3) the longitudinal record supports Dr. Arenas's conclusions. ECF
12 Nos. 10 at 13; 14 at 7. Plaintiff adds that Dr. Arenas was the only mental health
13 professional to administer the Beck Depression and Anxiety Inventories in
14 Plaintiff's native language, and the ALJ should have found Dr. Arenas's opinions
15 more persuasive given "the level of trust that Dr. Arenas was able to build with the
16 claimant by doing the interview personally in her native language, as well as his
17 experience and education in treating latino [sic] injured workers[.]" *Id.*

18 Plaintiff raises closely-related arguments with respect to the ALJ's treatment
19 of Dr. Williams, maintaining that the limitations that Dr. Williams found, although
20 they were expressed in check-box format, were supported by "several years of

1 treatment records that indicate severe depression and anxiety" as well as by Dr.
2 Arenas's findings and the reports of one-time examiners Drs. Fishers and
3 Friedman. ECF No. 10 at 16 (citing AR 1793, 1798–99). Plaintiff adds that the
4 other mental health examiners, Rebecca Fisher, MD and Michael Friedman, DO,
5 found that Plaintiff's mental health disorder was not caused by injuries related to
6 her state worker's compensation claim and could not, then, proceed to opine on
7 any of limitations associated with Plaintiff's mental impairments. *Id.* at 17.
8 Therefore, Plaintiff submits, "the limitations provided by Dr. Williams and Dr.
9 Arenas are significantly more persuasive and probative because they did consider
10 the limitations that would be posed by her mental health disorder." *Id.*

11 The Commissioner disputes Plaintiff's arguments one by one, but primarily
12 insists that "[t]he 'key question is not whether there is substantial evidence that
13 could support a finding of disability, but whether there is substantial evidence to
14 support the Commissioner's actual finding that claimant is not disabled.'" ECF
15 No. 12 at 18 (quoting *Jamerson v. Chater*, 112 F.3d 1064, 1067 (9th Cir. 1997)).
16 The Commissioner submits that the ALJ's identification of substantial evidence in
17 support of her treatment of the treating and examining mental health providers'
18 opinions is sufficient to affirm the ALJ's decision. *Id.*

19 Dr. Arenas examined and evaluated Plaintiff at the request of Plaintiff's
20 counsel on May 12, 2018. AR 1800. Dr. Arenas assessed Plaintiff as suffering
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1 from chronic pain, somatic symptom disorder, depression, anxiety, and “some
2 post-traumatic stress symptoms.” AR 1808. Dr. Arenas opined that “[g]iven the
3 client’s clinical profile, the extended time she has been affected, her poor English
4 skills, and her probable lack of viable marketable vocational abilities, [Plaintiff] is
5 probably not treatable to where she would ever return to employment, or to
6 successfully completed retraining.” AR 1809. Dr. Arenas continued by opining
7 that Plaintiff is “permanently totally disabled” and that:

8 Any further psychological and psychiatric treatments would only be
9 palliative versus curative or rehabilitative. Her chronic pain, emotional,
10 and related cognitive symptoms would severely interfere with abilities
11 to adequately attend, concentrate, remember, follow instructions, be
12 aware of potential hazards or dangers, and with productivity, getting
13 along with fellow trainees or employees, customers, or bosses,
managing emotional reactions, and with being on time or regularly
present at retraining or work site. A risk of further or additional
accidental injury to self or others due to the distraction or
inattentiveness from the noted pain and emotional symptoms would be
presented.

14 AR 1809.

15 The ALJ gave little weight to Dr. Arenas’s assessment, finding it to be
16 conclusory, poorly supported, and inconsistent with the longitudinal record. AR
17 35. The ALJ reasoned that Plaintiff “had an unremarkable presentation [sic] most
18 treatment records, and her mental symptoms improved with treatment.” AR 35.
19 The ALJ further found that Plaintiff’s inability to follow a three-step task upon
20 examination by Dr. Arenas to be inconsistent with her ability to shop, cook for

1 herself, care for her children, including an infant, all of which “reasonably require
2 [Plaintiff] to understand, remember, and execute tasks that are at least three-steps
3 [sic] on a regular basis.” AR 35–36.

4 Dr. Williams evaluated Plaintiff on two occasions at Plaintiff’s counsel’s
5 request. In July 2014, Dr. Williams completed a medical source statement
6 selecting that Plaintiff was limited by her mental impairment in her ability to carry
7 out several work-related mental activities. AR 891–92. Although the form is
8 ambiguous, Dr. Williams may have further opined that Plaintiff’s ability to
9 complete a normal workday was impaired. AR 892. Dr. Williams indicated that
10 his conclusions were based on clinical records, a clinical interview of Plaintiff, and
11 a personality assessment (the “MMPI”). AR 891–92. In April 2018, Dr. Williams
12 completed a second medical source statement again opining that Plaintiff is
13 limited, in several categories, in her ability to carry out work-related mental
14 activities. AR 1796–99. Dr. Williams provided no explanation on the form except
15 notes that are not decipherable by the Court. AR 1799.

16 The ALJ gave little weight to Dr. Williams’s opinions, reasoning that “the
17 marked limitations he assesses are not consistent with treatment notes, most of
18 which show an unremarkable mental status presentation by the claimant[,]” and are
19 inconsistent with the improvement of Plaintiff’s mental symptoms with
20 conservative treatment. AR 34. The ALJ further found that the limitations that Dr.
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1 Williams expressed were inconsistent with Plaintiff's ability to return to seasonal
2 work for a part of 2019 and that Dr. Williams opined on a final legal conclusion
3 reserved to the Commissioner when he assessed limitations in Plaintiff's ability to
4 complete a normal workday or workweek. AR 35.

5 As discussed above, substantial evidence supports that Plaintiff's record
6 contains largely unremarkable mental status examinations. *See* AR 32–33, 772,
7 1309, 1401 1406, 1965, 2049, 2052, 2062, 2132, 2201, 2229. Likewise,
8 substantial evidence supports the ALJ's reasoning with respect to conservative
9 treatment. *See* AR 29, 1175–77, 1210–12, 1813, 2061–67, and 2107–09.
10 Moreover, substantial evidence supports that Plaintiff engaged in the activities that
11 the ALJ discussed. AR 35–36, 97–98, 746, 1634, 1809, and 2254.

12 Plaintiff's arguments do not go to the issue of legal error and instead amount
13 to a request for the Court to reweigh the medical opinions of Dr. Williams and Dr.
14 Arenas relative to the other medical opinions in the record. *See Winans v. Bowen*,
15 853 F.2d 643, 644 (9th Cir. 1987) (noting that it is not the role of the federal court
16 to reweigh evidence or substitute its own judgment for the Secretary's). The
17 records that Plaintiff emphasizes do not contradict or otherwise undermine ALJ
18 Adams's decision, even assuming that they could have supported a different
19 interpretation. Both inconsistency with the medical evidence and a claimant's
20 activities are specific and legitimate reasons for not relying on a treating or

1 examining provider's opinion. *See Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th
2 Cir. 2005). The Court finds no error in the ALJ's treatment of Plaintiff's mental
3 health evaluator's opinions.

4 **Rehabilitation Institute of Washington**

5 Plaintiff argues that the ALJ did not give a clear and convincing reason for
6 giving "little weight" to the opinions of Plaintiff's providers from the
7 Rehabilitation Institute of Washington ("RIW") on the basis that Plaintiff could
8 care for her baby in 2016, when the same record "indicates that the claimant could
9 not pull her pants up anymore because of the strain carrying her baby had on her
10 neck and back." ECF No. 10 at 17 (citing AR 1634). Plaintiff submits that the
11 evidence supports only that Plaintiff would be capable of lifting up to ten pounds
12 without additional breaks or being off-task or absent. *Id.* Plaintiff further argues
13 that the ALJ erred in finding that the limitation to sedentary work found by the
14 RIW providers to be temporary, "despite nothing in the records indicating such."
15 *Id.* (citing AR 1410, 1423, 1513, 1531, and 1600).

16 The Commissioner responds that the opinions from RIW were "somewhat"
17 internally inconsistent, in that they opined that Plaintiff is limited to sedentary
18 work while also opining that Plaintiff could push and pull up to twenty-five
19 pounds. ECF No. 12 at 18 (citing AR 150–51, 739–45, 1492–93, 1513, 1423,
20 1609–14). The Commissioner adds that the next month, RIW providers indicated
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1 that Plaintiff could perform a very restricted range of work, including carrying no
2 more than two pounds frequently and lifting no more than seven pounds. *Id.* at 19
3 (citing AR 1513). The Commissioner contends that ALJs may discount opinions
4 for internal inconsistencies such as these. *Id.* (citing *Matney v. Sullivan*, 981 F.2d
5 1016, (9th Cir. 1992)). Furthermore, the Commissioner argues, that ALJs may
6 discount opinions for being inconsistent with Plaintiff's activities, such as her
7 ability to care for and carry her 18-pound baby and her ability to cook, clean, and
8 shop. *Id.* (citing AR 33, 1634, 857; *Ford v. Saul*, 950 F.3d 1141, 1155 (9th Cir.
9 2020)). Lastly, the Commissioner maintains that substantial evidence supported
10 that the providers assessed their limitations as temporary and indicated that
11 Plaintiff would ultimately be able to perform light work, and the Commissioner
12 submits that ALJs "may reject opinions that only assess temporary restrictions."
13 *Carmickle*, 533 F.3d. 1155, 1165 (9th Cir. 2008)).

14 The ALJ gave little weight to the opinions of the multidisciplinary team at
15 RIW. AR 33. The ALJ discussed that in February 2017, the RIW team indicated
16 that Plaintiff is limited to "sedentary" work while also indicating that Plaintiff
17 could lift 12.5 pounds from knee level and could push/pull 25 pounds. AR 33.
18 The ALJ noted that RIW evaluators further assessed significant limitations in
19 March 2017, "including a limitation to carrying no more than 2 pounds frequently
20 and lifting no more than 7 pounds." AR 33 (citing AR 1513). The ALJ further
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1 notes that the RIW's assessment "does not reflect an evaluation of function for the
2 entire relevant period because it indicates that the described limitations are
3 temporary, and that the claimant would ultimately be able to perform light work."
4 AR 33.

5 Plaintiff does not dispute that substantial evidence supports each of the three
6 reasons that the ALJ provided for discounting the opinions of the RIW providers,
7 internal inconsistency, inconsistency with Plaintiff's activities, and the temporary
8 duration of the limitations assessed. *See* AR 33, 857, 1513, 1523, and 1634.
9 Rather, Plaintiff again asks the Court to reweigh the evidence and reach her desired
10 result, which is not the Court's role in this matter. *See Winans*, 853 F.2d at 644.

11 Accordingly, the Court finds no error in the ALJ's treatment of the medical
12 source opinions, and grants judgment to the Commissioner on this ground.

13 ***Step Five***

14 Plaintiff contends that the ALJ erred at step five because the VE testified in
15 response to a hypothetical that was incomplete due to the ALJ's allegedly improper
16 consideration of Plaintiff's subjective symptom testimony and the medical opinion
17 evidence. *See* ECF No. 14 at 8. The ALJ's hypothetical must be based on medical
18 assumptions supported by substantial evidence in the record that reflect all of a
19 claimant's limitations. *Osenbrock v. Apfel*, 240 F.3d 1157, 1165 (9th Cir. 2001).
20 The ALJ is not bound to accept as true the restrictions presented in a hypothetical
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1 question propounded by a claimant's counsel. *Osenbrock*, 240 F.3d at 1164. The
2 ALJ may accept or reject these restrictions if they are supported by substantial
3 evidence, even when there is conflicting medical evidence. *Magallanes v. Bowen*,
4 881 F.2d 747, 756 (9th Cir. 1989).

5 Plaintiff's argument assumes that the ALJ erred in his treatment of Plaintiff's
6 subjective symptom testimony and the medical source testimony and in formulating
7 the RFC. As discussed above, the ALJ's assessment of this evidence was not
8 erroneous. Therefore, the RFC and hypothetical contained the limitations that the
9 ALJ found credible and supported by substantial evidence in the record. The ALJ's
10 reliance on testimony that the VE gave in response to the hypothetical was proper.
11 *See Bayliss*, 427 F.3d at 1217–18. The Court grants judgment to the Commissioner
12 on this final ground.

13 Having reviewed the record and the ALJ's findings, this Court concludes that
14 the ALJ's decision is supported by substantial evidence and free of harmful legal
15 error.

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1 Accordingly, **IT IS HEREBY ORDERED** that:

2 1. Plaintiff's Opening Brief, **ECF No. 10**, is **DENIED**.
3 2. Defendant the Commissioner's Brief, **ECF No. 12**, is **GRANTED**.
4 3. Judgment shall be entered for Defendant.

5 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this
6 Order, enter judgment for Defendant as directed, provide copies to counsel, and
7 **close the file** in this case.

8 **DATED** November 27, 2023.

9
10 *s/ Rosanna Malouf Peterson*
11 ROSANNA MALOUF PETERSON
12 Senior United States District Judge